

**CONFEDERATED TRIBES
OF THE
COLVILLE RESERVATION**

**TITLE ____
CHILD SUPPORT
CHARGE-OFF STATUTE**

Approved by

Resolution # 1997-758

*Finalized & adopted
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CHILD SUPPORT CHARGE-OFF STATUTE

___01.010 **Purpose.** It is the Tribe's public policy that children are entitled to reasonable, adequate child support. In furtherance of the policy, the Tribe has entered into an agreement (Agreement) with the State of Washington, Division of Child Support (DCS), to provide a forum comparable to DCS' Conference Boards to resolve issues regarding child support arrears with the laws of the Tribe subject to the limitations set out in this chapter.

___01.02 **Definitions.**

- (a) **Child Support Debt.** Any monies, in-kind or traditional support recognized by the Tribe to be owed to or on behalf of a child to satisfy a child support obligation or to satisfy in whole or in part arrears or delinquency of such obligation, whether denominated as child support, spousal support, or maintenance. This definition shall also include medical support obligations.
- (b) **Child Support Order.** Any judgment or order of the Colville Tribal Court, Superior Court of the State of Washington, any tribal court order where that tribe accords the Colville Tribal Court reciprocal recognition, any court order or administrative order of another competent jurisdiction, or an administrative determination established by the Department ordering payment of a set or determinable amount of child support, and/or medical support.
- (c) **Custodian.** Any person having the care, physical custody and control of any child or children.
- (d) **Department.** The Washington State Department of Social and Health Services, Division of Child Support.
- (e) **Payee.** A person to whom a child support debt is owed.
- (f) **Responsible Parent.** A natural parent, adoptive parent, or step-parent of a child who has been found to owe a duty to pay support monies.
- (g) **State.** The State of Washington, Department of Social and Health Services, Division of Child Support.

- (h) **Tribal Court.** The Colville Tribal Court of the Confederated Tribes of the Colville Reservation.
- (i) **Tribe.** The Confederated Tribes of the Colville Reservation, a federally recognized Indian Tribe confederated under a constitution adopted in February 26, 1938 and approved by the Commissioner of Indian Affairs April 29, 1938.

.02 CHARGE-OFF

 .02.010 This chapter applies only to any child support debt due the State or Tribe from a responsible parent which is covered by the Agreement.

Such child support debts may be written off and cease to be accounted as an asset by an order of the Tribal Court if, under the procedures in this chapter, it is found there are no cost-effective means of collecting the debt under this chapter.

 .02.020 The Tribe may accept offers of compromise of disputed claims or may grant partial or total charge-off of child support arrears owed to the Tribe or State up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred to the same extent that is allowed to the Department under RCW 74.20A.220 and as authorized by this Chapter.

 .02.030 The rules set out in this chapter shall govern the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears.

 .02.040 The rights of the payee under an order for support shall not be prejudiced if the Tribe accepts an offer of compromise, or grants a partial or total charge-off under this section.

 .02.050 The responsible parent owing a support debt may execute a written extension or waiver of any statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms.

____.03 PROCEDURES

- ____.03.01.010 **Tribal Forum — Tribal Court.** [T]he Tribal Court shall have the jurisdiction to inquire into, determine facts of, and attempt to resolve matters in which a responsible parent, custodian, or payee under an order asks for the Court's assistance regarding back child support arrears as defined in this chapter.
- ____.03.01.020 **Intent and Purpose.** The intent and purpose of using the Tribal Court for implementing this chapter is to facilitate the speedy resolution of grievances and to assure that tribal law, custom and tradition are adequately considered in any hearing.
- ____.03.01.030 **Initiating a Case.** An aggrieved person may commence an action under this chapter by filing a request with the Tribal Court.
- ____.03.01.040 **Request for Review.** The person seeking relief under this chapter shall request a review in writing. The Tribal Court or the Tribal Council or its designee may develop a form specifically for this purpose.
- ____.03.01.050 **Notice.** The Tribal Court shall, upon receipt of a Request for Review, cause a notice of hearing to be mailed to the applicant, the State, the applicant's representative, and any other person or agency who is a party in interest to the proceeding. The notice shall state that a hearing has been scheduled, and inform the parties of the time and place of the hearing.
- ____.03.01.060 **Payee's Right to Notice and to Request a Court Hearing.** Where the department is not providing public assistance to the payee, and the responsible parent timely requests a review under _____.03.01.050, The hearing shall be scheduled for a date at least thirty days after the notice is issued, and the notice shall state:
- (a) The payee has twenty (20) days from the date of the notice to file a response with the Colville Tribal Court.
 - (b) The payee has a right to appear and participate in the hearing, and to be represented by counsel.

- (c) Tribal Court's decision will become the final position on the arrearage's debt claimed owed by the department; and
- (d) If the payee does not appear at the Tribal Court hearing, the decision may be adverse to the payee's interest including a reduction in or charge-off of the amount of arrearages claimed owing in the responsible parent's case.
- (e) The payee may make a motion to the Tribal Court to be allowed to participate in the hearing by telephone. The Tribal Court will consider all circumstances, including, but not limited to, the distance the payee would have to travel to the Courthouse, in deciding the motion to allow participation by telephone. The Tribal Court shall liberally allow telephone participation when in the interest of justice and fairness. Any decisions on said motions will be considered final for purposes of an appeal.

____.03.01.080

Effect of Payee's Objection. If the payee objects to the hearing, the Tribal Court shall inform the responsible parent and the payee that a hearing shall be held on the objection, at which time the parties shall provide arguments to the Court why the application of the person seeking relief should or should not be heard by the Tribal Court. The Tribal Court shall issue specific findings of fact and conclusions of law on its ruling in such hearings, which shall be considered final for the purposes of further appeal before the Colville Tribal Appellate Court.

____.03.01.090

Powers of Tribal Court. Hearings shall be held pursuant to [Chapters 3 and 4], Civil Proceedings, before the Tribal Court. The Tribal Court may, in addition, receive evidence by affidavit or other written submission when necessary or practicable together with written or oral argument. The Tribal Court may designate persons having specific familiarity with the matter at issue or technical expertise with the subject to advise the Tribal Court.

____.03.01.100

Written Decision to Issue. The Tribal Court shall make a written decision stating specific findings of fact, conclusions of law, and a judgment order on all cases brought under this Chapter.

- (a) The findings of fact and conclusions of law shall, at a minimum, include findings and conclusions regarding:

- (i) Subject matter jurisdiction;
- (ii) Personal jurisdiction over all of the parties;
- (iii) The total amount of public assistance paid in the case;
- (iv) The basis or bases for the decision.

____.03.01.110

Factors to Consider for Charge-Off Requests. The Tribal Court shall base a decision to grant partial or total charge-off of arrears owed to the department on the following considerations:

- (a) Error in law or bona fide legal defects that materially diminish chances of collection; or
- (b) Substantial hardship; or
- (c) Costs of collection action in the future that are greater than the amount to be charged off; or
- (d) Settlement from lump-sum cash payment that is beneficial to the state considering future costs of collection and likelihood of collection; or
- (e) A correction of improperly calculated arrears; or
- (f) Tribal custom or tradition.

____.03.01.120

Substantial Hardship Considerations for Responsible Parent with Dependent Child. In making a determination of substantial hardship where a dependent child is in the home of the responsible parent, the Tribal Court shall measure the net income and all available assets and resources of the responsible parent against the needs standard for public assistance for the appropriate family size, as stated in WAC 388-250-1250, unless a tribal standard has been developed. The Tribal Court shall consider the necessity to apportion the responsible parent's income and resources on an equitable basis with the child for whom the arrears accrued. When reviewing a claim of substantial hardship, the Tribal Court may consider the following information including, but not limited to:

- (a) The child on whose behalf support is owed is reunited with the responsible parent because the:
 - (i) Formerly separated parents have reconciled; or

- (ii) Child has returned to the responsible parent from foster care, the care of a relative, or the care of a custodian.
- (b) The responsible parent is aged, blind, or disabled and receiving Supplemental Security Income, Social Security, or other similar benefits.
- (c) The mother of the child is seeking charge off of debt accrued on behalf of a child who was conceived as a result of incest or rape, and presents evidence of rape or incest, acceptable under 45 CFR 232, 43(c).
- (d) Payment on the arrears obligation interferes with the responsible parent's payment of current support to a child living outside the home.
- (e) The responsible parent has limited earning potential due to:
 - (i) Dependence on seasonal employment that is not considered in the child support order; or
 - (ii) Illiteracy; or
 - (iii) Limited English proficiency; or
 - (iv) Other factors limiting employability or earning capacity.
- (f) The responsible parent's past efforts to pay support and the extent of the parent's participation in the child's parenting.
- (g) The size of the responsible parent's debt and the prospects for increased income and resources.

____.03.01.130

Substantial Hardship Considerations for Responsible Parent Without a Dependent Child. The Tribal Court may find that substantial hardship exists for a responsible parent, without finding hardship to a dependent child.

- (a) In making a determination of substantial hardship to an individual without a dependent child, the Tribal Court shall measure the applicant's income, assets, and resources against the needs standard as developed in .03.01.120 above. In combination with the income test, the Tribal Court may consider the following factors when reviewing a claim of substantial hardship:
 - (i) The responsible parent is aged, blind, or disabled and receiving Supplemental Security Income, Social Security, or other similar benefits.

- (ii) The mother of a child is seeking relief from debt accrued on behalf of a child who was conceived as a result of incest or rape, and presents evidence of rape or incest, acceptable under 45 CFR 232.43(c); or
- (iii) The responsible parent has limited earning potential due to:
 - (A) Dependence on seasonal employment that is not considered in the child support order; or
 - (B) Illiteracy; or
 - (C) Limited English proficiency; or
 - (D) Other factors limiting employability or earning capacity.
- (b) The Tribal Court may enter an order for a reduced payment on the support debt, or a conditional reduced payment on the support debt, when there is substantial hardship to a dependent child.

____.03.01.140

Partial, Total or Conditional Reduction or Charge-Off of Arrearages.

The Tribal Court may:

- (a) Reduce collection on the responsible parent's support debt to an amount that alleviates the hardship without altering the amount of the support where grounds to make an adjustment under .03.01.110 exist, but the circumstances creating the hardship are temporary. Temporary hardship situations may include the factors listed in the previous subsections and in addition, the applicant's receipt of public assistance on the applicant's behalf or on behalf of a child in the applicant's home.
- (b) Create incentives to promote payment or family unity by entering a conditional order of:
 - (i) Total or partial charge off as allowed by this chapter; or
 - (ii) Reduced payment on the support debt.
- (c) Condition reduced payment, or total or partial charge off on:
 - (i) Continued payment according to a payment schedule imposed by the Tribal Court; or
 - (ii) Continued reconciliation; or

(iii) A family remaining off of AFDC.

____.03.01.150

Incentives and Conditions: Limits. When creating incentives or providing conditional relief under this chapter, the Tribal Court shall:

- (a) Not create a conditional charge-off without specifying a period of performance after which the charge-off is irrevocable;
- (b) Not create a charge-off conditioned on the parties remaining reconciled unless the parties have been reconciled for at least six months at the time of the Tribal Court hearing;
- (c) Consider whether the conditions would create:
 - (i) Incentives for abuse or intimidation of the other party to the order;
 - (ii) Incentives for fraud; or
 - (iii) Unreasonable reluctance to obtain financial or medical assistance necessary for the health and best interests of the children.

____.03.01.160

Violations of Conditions: Effects. When the responsible parent violates the terms of a conditional charge-off or reduced repayment rate order imposed by a Tribal Court under this chapter the Tribal Court, after Notice and opportunity for a hearing may enter an order providing:

- (a) Any amount charged off by the Tribal Court under the decision prior to the violation shall remain uncollectible;
- (b) The Tribal Court may order that the department may collect any further amount that would have been charged off under the decision after the date of violation; and
- (c) The responsible parent may not reinstate terms of the decision by renewed compliance with the terms of the decision, unless the department agrees in writing to reinstate the conditional charge-off or repayment rate, or the Tribal Court orders it.

____.03.01.170

Right of Appeal to Tribal Appellate Court. Any order entered by the Tribal Court under this chapter may be appealed to the Tribal Appellant Court. The Tribal Appellate Court may review the decision of the Tribal Court and vacate

decisions found to be inconsistent with the standards in this chapter and remand the application for issuance of a new decision in compliance with this chapter.

____.03.01.180

Distribution of Decision. The Tribal Court shall cause a copy of the decision to be distributed to the applicant, the applicant's representative, other parties in interest, the appropriate field office for action consistent with the decision of the Tribal Court, and the director of DCS.

____.03.01.190

Tribal Court Hearing Limits. The Tribal Court hearing under this chapter is not a substitute for any constitutionally or statutorily required hearing under any other applicable laws. An aggrieved party may be represented before the Tribal Court by a spokesperson of the party's choice, who is allowed to practice before the Tribal Court. Neither the Tribe nor the department shall pay any costs incurred by the aggrieved person in connection with the Tribal Court hearings under this chapter.